

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 00-0225
INDIANA CORPORATION INCOME TAX
For the 1998 Tax Year**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Penalties and Interest Incurred As a Result of Taxpayer's Erroneous Treatment of LIFO Recapture.

Authority: I.R.C. § 1363(d); IC 6-8.1-10-1; IC 6-8.1-10-1(a); IC 6-8.1-10-2.1(a)(2); IC 6-8.1-10-2.1(a)(3); IC 6-8.1-2.1(b)(2), (4); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer protests the imposition of penalties and interest incurred when taxpayer erroneously determined the manner in which a LIFO recapture would be treated for purposes of the state corporate income tax.

STATEMENT OF FACTS

The taxpayer is an automobile dealership which, in 1998, elected to be treated as an S corporation effective on January 1, 1999. As a result of that decision, the taxpayer incurred liability for the recapture of LIFO benefits as specified under I.R.C. § 1363(d). The taxpayer purportedly consulted with a Department member in order to determine the manner in which Indiana allows the LIFO recapture to be treated. The taxpayer alleges that it was advised that Indiana "piggy backs" with the federal provision, I.R.C. § 1363(d)(2), which allows for the LIFO recapture to be paid over four tax years. Accordingly, the taxpayer filed a 1998 state tax return in which it reflected the four-year payment scheme specified under the Internal Revenue Code. Subsequently, taxpayer received a Proposed Assessment which, in effect, disallowed the four-year spread and demanded immediate payment. The Department took the position that the federal provision was a tax payment plan unavailable for purposes of the Indiana tax but that all income tax due from the LIFO recapture was due and should have been reported at the time of the taxpayer's final C corporation state return. The taxpayer has withdrawn that portion of its original protest challenging the assessment of taxes.

DISCUSSION

I. Penalties and Interest Incurred As a Result of Taxpayer's Erroneous Treatment of LIFO Recapture.

Taxpayer protests the imposition of penalties and interest – incurred when the taxpayer erroneously reported its LIFO recapture – on the ground that its treatment of the LIFO recapture was predicated upon advice received from the Department. Taxpayer requests the abatement of both penalties and interest the treatment of which will be addressed separately.

A. Abatement of the Ten-Percent Negligence Penalty.

Under IC 6-8.1-10-2.1(a)(2), a taxpayer is subject to a penalty if the taxpayer “fails to pay the full amount of tax shown on the person’s return on or before the due date for the return of payment.” IC 6-8-10-2.1(a)(3), imposes on the taxpayer a penalty for “a deficiency that is due to negligence.” The penalty is limited to ten-percent of the amount that was not timely remitted. IC 6-8.1-10-2.1(b)(2), (4). The standards under which negligence is determined and the penalty imposed is found at 45 IAC 15-11-2(b) which states the “[n]egligence’ on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to the duties placed upon the taxpayer by the Indiana Code or department regulations.” The regulation goes on to state that the Department shall determine negligence “on a case by case basis according to the facts and circumstances of each taxpayer.” Id.

The Department is authorized to waive the penalty “if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence.” 45 IAC 15-11-2(c). The regulation provides a non-exclusive list of factors, which go toward establishing reasonable cause, but concludes that “[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.” Id.

The “particular facts and circumstances” presented by the taxpayer lead to a conclusion that taxpayer’s treatment of the LIFO recapture, as represented on the taxpayer’s 1998 Indiana return, was due to “reasonable cause and not due to negligence.” Taxpayer’s treatment of the LIFO recapture – misguided as it was – was based upon apparently erroneous advice received from a member of the Department. Taxpayer has supplied evidence of its request for information from the Department and the advice received as a result of that request. Therefore, because the taxpayer made a decision based upon a reasonable extrapolation of the relevant Internal Revenue Code – a decision reinforced by advice received upon consulting with the Department – taxpayer has demonstrated reasonable care, caution, and diligence sufficient to justify abating the ten-percent negligence penalty assessed under authority of IC 6-8.1-10-2.1(a)(2).

B. Abatement of Accrued Interest.

Taxpayer protests the imposition of interest on assessed taxes and requests that that the interest which has accumulated on those assessed taxes be abated. Under IC 6-8.1-10-1(a), if a person incurs a deficiency upon a determination by the Department, “the person subject to interest on the amount of underpayment.”

Despite the reasonable care and caution demonstrated by the taxpayer, the Department has no discretion regarding the imposition of interest. Under IC 6-8.1-10-1, interest is not abated for any reason.

FINDING

Taxpayer’s protest is sustained in part and denied in part.